

## **AGENDA ITEM 8**

### **UNIDROIT SPACE EQUIPMENT PROTOCOL**

#### **STATEMENT BY THE DELEGATION OF THE UNITED STATES OF AMERICA**

We would like to commend the Secretariat for its work together with UNIDROIT on the report to the Committee (A/AC.105/c.2/1.225) on the proposed UNIDROIT convention system for international financing of mobile equipment, and the draft Space Equipment Protocol to that convention. We welcome the opportunity to set forth our views on this agenda item, because we believe it has considerable potential to facilitate the development of commercial activities in outer space, which in turn will benefit states in all regions and all levels of economic development.

The UN space law regime has successfully put in place a framework for the conduct of activities in space. In the funding area, however, the picture has changed substantially since the treaties were negotiated, largely with regard to development of commercial activities in space and the parallel need to replace government funding for space activities.

Government funding for space ventures has steadily declined, and new commercial activities in space can no longer rely on high-cost "venture" capital, until recently the primary method by which non-government funded activities could be

undertaken. New methods in commercial finance can fill this funding gap; as a practical matter, this will require a specific treaty basis for this proposed new financing method.

Availability of general funding sources is important not only for the development and placement in orbit of satellite facilities but also for the financing of services which may be sought by all states, whether or not they have a direct interest in space equipment per se.

These new concepts of commercial finance, generally called secured interest financing (for space equipment and services this would in particular involve "asset-based" and "accounts receivable" financing), have already been adopted by a small number of states. This is expected to change soon with the adoption in 2001 of two multilateral conventions on finance: the UNCITRAL convention on accounts receivable financing is expected to be completed this June in Vienna, and the UNIDROIT convention on mobile equipment finance, and its first protocol developed jointly with ICAO on aircraft finance, are expected to be completed in October. In addition, an OAS-sponsored model national law on secured financing is expected to be approved in November 2001, which may lead to similar developments in other regions.

The draft UNIDROIT treaty system and the Space Equipment Protocol, as well as the new UNCITRAL convention I just noted, can extend modern asset-based and accounts receivable financing to activities in outer space. The Office for Outer Space Affairs has worked together with the UNIDROIT Secretariat on the report that has been submitted to this sub-committee on these instruments. We believe this collaborative effort has been productive, and the continued ability of OOSA and this sub-committee to monitor and participate in to the extent appropriate the work of UNIDROIT, and report on its progress, will be of benefit to us all.

Issues need to be further considered, such as the relationship of obligations undertaken by states under the UN space law regime and the exercise of rights acquired through the conduct of commercial activities in space under the new draft UNIDROIT convention. The issues where these treaty systems may intersect will need to be analyzed closely, since if sufficient rights cannot be obtained under a space finance treaty, commercial finance and capital markets lending may not take place, and the benefits that could flow to states at all levels of economic development would not be realized.

We would like at this point to express our views on some technical aspects of the proposed UNIDROIT treaty system as it

would relate to space activities. The basic convention is expected to be finalized at a diplomatic conference in South Africa in October 2001, together with the UNIDROIT/ICAO protocol on aircraft finance which will bring the basic convention into force with regard to aircraft transactions. Many of the issues relevant to space activities were also relevant to aircraft and air transportation, and were considered in the context of the air transportation treaty system established under the Chicago, Geneva and Warsaw conventions. While there are differences, we are hopeful that progress making commercial finance available for air transportation can be mirrored in progress making commercial finance available for outer space activities without substantial delay.

The new UNIDROIT convention system and the ICAO/UNIDROIT protocol are expected to attract financing for air transportation by meeting the standards of the capital markets, i.e., the recognition under the proposed new financing treaty system of international financing rights, together with a system for establishing priorities among claimants who hold other financing interests, and a voluntary optional set of "expedited remedies". Each of these factors is critical to overcome the otherwise high risk associated with space activities, as well as country risk that is often associated with limitations on

financing for states at lesser levels of economic development. Reaching a sufficiently high level of commercial certainty as to what rights will be enforced is the primary threshold that must be crossed to extend commercial finance into the space arena.

To achieve such commercial certainty, priority between claimants would be established on the basis of an internationally accessible, computer-based registry system for those rights. Such a registry system would involve a governmental "supervising authority" composed at least of signatory and ratifying states. This type of registry would bear no relationship to, and would not intersect with, registry activities undertaken by OOSA under the UN space law regime. Nevertheless, it may be worthwhile to explore the feasibility and appropriateness of the United Nations, acting through the Committee or OOSA, performing some role in that regard. One possibility is that such a registry authority could be authorized by, and operate as a sub-unit of, the Committee. The registry operation itself would be expected to be contracted to a private high-technology entity, and the cost of operation borne by users.

Another important set of issues to be resolved are the extent to which "associated rights", which are necessary to operate satellites and provide services, can be enforced. It

is, of course, recognized that states may subject the transference of such rights, including orbital positioning and broadcast spectra, to national regulatory regimes. However, the extent to which this would render the ability to exercise rights of telemetry, tracking and control (TTC) uncertain or unachievable would directly affect availability of finance and the cost of that finance under any treaty system. The relationship to state obligations undertaken under the UN space law regime will also have to be examined in this regard.

We believe that examining these issues and assisting UNIDROIT in its work is a worthy task for this Subcommittee. Should the Subcommittee determine that a working group would be a useful method of organizing its work in the future on this subject, we would support the proposal. We would also participate in any informal consultations should members decide that this is the best way to advance our work between now and the next session of the Subcommittee.

Finally, Mr. Chairman, my delegation believes that the Subcommittee has an opportunity here to make a significant contribution to a new financing regime that has the potential to increase space activities and benefit all countries. We believe that the Subcommittee should attach a priority to its work on this item.